

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HERMÈS INTERNATIONAL and
HERMÈS OF PARIS, INC.,

Plaintiffs,

-against-

MASON ROTHSCHILD,

Defendant.

CIVIL ACTION NO.

22-CV-00384 (JSR)

DECLARATION OF JESSICA H. FERNANDEZ

I, Jessica H. Fernandez, declare as follows:

I am an attorney associated with the firm of Baker & Hostetler LLP, attorneys for Plaintiffs Hermès International and Hermès of Paris, Inc. (“Hermès”) in the above-captioned case. I submit this declaration in support of Hermès’s Motion for Permanent Injunction. I have firsthand knowledge of the matters stated herein.

1. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the January 31, 2023 trial transcript.

2. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiffs’ Admitted Trial Exhibit 5, an excerpt of the U.S. Trademark and Patent Office’s Trademark Status & Document Retrieval record for Registration No. 2991927, generated on July 7, 2022, and the Registration Certificate for Registration No. 2991927.

3. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiffs’ Admitted Trial Exhibit 6, an excerpt of the U.S. Trademark and Patent Office’s Trademark Status &

Document Retrieval record for Registration No. 3936105, generated on July 7, 2022, and the Registration Certificate for Registration No. 3936105.

4. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the January 11, 2021 deposition testimony of Robert Chavez, admitted into evidence at trial on January 30, 2023.

5. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 244, a screenshot of a Yahoo Finance transcript titled, "NFT artist: 'MetaBirkins' project aims to create 'same kind of illusion that it has in real life'," dated December 6, 2021, https://finance.yahoo.com/video/nft-artist-metabirkins-project-aims-200930209.html?fr=sycsrp_catchall, and captured on August 2, 2022 using PageVault.¹

6. Attached hereto as **Exhibit 6** is a true and correct copy of the METABIRKINS Twitter Account, <https://twitter.com/MetaBirkins>, captured on February 24, 2023 using PageVault.

7. Attached hereto as **Exhibit 7** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 20, the December 16, 2021 letter and attachments from Gerald J. Ferguson at BakerHostetler to Defendant Mason Rothschild, with the subject "Re: URGENT! Unauthorized Use of Hermès' Trademarks."

8. Attached hereto as **Exhibit 8** is a true and correct copy of the METABIRKINS NFT page on the LooksRare website, <https://looksrare.org/collections/0x566b73997F96c1076f7cF9e2C4576Bd08b1A3750>, captured on February 23, 2023 using PageVault.

¹ PageVault is a service that helps legal professionals capture Web Based Content in a manner that preserves and accurately portrays the Web Based Content as of the date of the capture.

9. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the February 2, 2023 trial transcript.

10. Attached hereto as **Exhibit 10** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 306, excerpts of a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks, dated November 30, 2021 through December 3, 2021.

11. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the February 1, 2023 trial transcript.

12. Attached hereto as **Exhibit 12** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 227, a screenshot of the METABIRKINS Website, <https://metabirkins.com/>, accessed on December 1, 2021.

13. Attached hereto as **Exhibit 13** is a true and correct copy of Defendant's Admitted Trial Exhibit 506, a screenshot of the METABIRKINS Instagram Account, accessed on January 29, 2023.

14. Attached hereto as **Exhibit 14** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 239, a redacted text message exchange between Mason Rothschild and Mark Design, dated November 7, 2021.

15. Attached hereto as **Exhibit 15** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 146, a screenshot of a December 11, 2021 post on the METABIRKINS Instagram Account.

16. Attached hereto as **Exhibit 16** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 243, a redacted text message exchange between Mason Rothschild and Mark Design, dated October 19, 2021.

17. Attached hereto as **Exhibit 17** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 224, a redacted text message exchange between Mason Rothschild and Eric Ram, dated October 24, 2021.

18. Attached hereto as **Exhibit 18** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 225, a redacted text message exchange between Mason Rothschild and Aaron Maresky, dated October 28, 2021.

19. Attached hereto as **Exhibit 19** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 305, a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks, dated December 3, 2021.

20. Attached hereto as **Exhibit 20** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 373, a redacted text message exchange between Mason Rothschild and Lauren, dated December 2, 2021.

21. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the February 3, 2023 trial transcript.

22. Attached hereto as **Exhibit 22** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 308, excerpts of a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks, dated December 16, 2021 through June 7, 2022.

23. Attached hereto as **Exhibit 23** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 380, a screenshot of the *Elle UK* article, "BIRKIN NFT: Everything You Need To Know About The 'Handbag' Of The Future."

24. Attached hereto as **Exhibit 24** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 45, a screenshot of the Google Search results for "hermes nft," captured January 26, 2023.

25. Attached hereto as **Exhibit 25** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 253, a screenshot of the *New York Post* article, "Metaverse clothing, travel, plastic surgery: Experts predict life in 2030," from <https://nypost.com/2022/01/08/experts-predict-living-in-the-metaverse-by-2030/>, captured January 26, 2022.

26. Attached hereto as **Exhibit 26** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 254, an article titled "What is the interest of the luxury world to invest in NFTs?" dated May 23, 2022 from a publication *Challenges*, captured October 6, 2022 using PageVault.

27. Attached hereto as **Exhibit 27** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 309, a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks.

28. Attached hereto as **Exhibit 28** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 279, excerpts of screenshots of posts on the METABIRKINS Instagram Account, accessed February 24, 2022.

29. Attached hereto as **Exhibit 29** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 100, excerpts of an SMI Aware Export of the METABIRKINS page on Twitter, <https://twitter.com/MetaBirkins>.

30. Attached hereto as **Exhibit 30** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 193, excerpts of demonstratives for Dr. Bruce Isaacson's testimony titled "Survey Measuring Likelihood of Confusion Between MetaBirkins and Birkin Handbags."

31. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the January 30, 2023 trial transcript.

32. Attached hereto as **Exhibit 32** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 238, a screenshot of an October 29, 2021 Tweet from Mason Rothschild's Twitter.

33. Attached hereto as **Exhibit 33** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 387, direct messages between Instagram users hectourc and METABIRKINS, dated November 8, 2021 through December 8, 2021.

34. Attached hereto as **Exhibit 34** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 388, a direct message on Twitter from Hectourc to the METABIRKINS Twitter, dated December 3, 2021.

35. Attached hereto as **Exhibit 35** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 389, a May 13, 2021 email from Basic.Space to mase@masonrothschild.com, with the subject "Your bid has been placed."

36. Attached hereto as **Exhibit 36** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 390, a May 14, 2021 email from Basic.Space to mase@masonrothschild.com, with the subject "Your bid has been placed."

37. Attached hereto as **Exhibit 37** is a true and correct copy of excerpts from the February 6, 2023 trial transcript.

38. Attached hereto as **Exhibit 38** is a true and correct copy of a February 8, 2023 Twitter Thread from Mason Rothschild, <https://twitter.com/MasonRothschild/status/1623367118493257730>, captured on February 23, 2023 using PageVault.

39. Attached hereto as **Exhibit 39** is a true and correct copy of a screenshot of Mason Rothschild's Instagram story, reposting the story of Instagram user kend305, tagging @metabikins, @masonrothschild, @voguebusiness, and @chapter2agency.

40. Attached hereto as **Exhibit 40** is a true and correct copy of a screenshot of Mason Rothschild's Instagram story, reposting the story of Instagram user sweet_c0le, tagging @masonrothschild and @metabirkins.

41. Attached hereto as **Exhibit 41** is a true and correct copy of a screenshot of a post by Mason Rothschild with a link to a tweet by Mason Rothschild, on the METABIRKINS Discord Server.

42. Attached hereto as **Exhibit 42** is a true and correct copy of a screenshot of a post by Mason Rothschild with a link to the *Vogue Business* article, "Hermès wins case against Metabirkins over digital NFTs, Rothschild to appeal," on the METABIRKINS Discord Server.

43. Attached hereto as **Exhibit 43** is a true and correct copy of a screenshot of a post by Mason Rothschild with a link to *The New York Times* article, "Hermès Wins MetaBirkins Lawsuit; Jurors Not Convinced NFTs Are Art," on the METABIRKINS Discord Server.

44. Attached hereto as **Exhibit 44** is a true and correct copy of a screenshot of Mason Rothschild retweeting a tweet by Twitter user Zenia (like tan-zania).

45. Attached hereto as **Exhibit 45** is a true and correct copy of a screenshot of a post by Mason Rothschild with a link to a tweet by Mason Rothschild, on the Gasoline Discord Server.

46. Attached hereto as **Exhibit 46** is a true and correct copy of a screenshot of February 8, 2023 tweet from Mason Rothschild, <https://twitter.com/MasonRothschild/status/1623394003595952129>, captured on February 24, 2023 using PageVault.

47. Attached hereto as **Exhibit 47** is a true and correct copy of a screenshot of a Mason Rothschild's Instagram story, reposting the Instagram story of Rhett Millsaps of *The New York Times* article, "Hermès Wins MetaBirkins Lawsuit; Jurors Not Convinced NFTs Are Art."

48. Attached hereto as **Exhibit 48** is a true and correct copy of a screenshot of a Mason Rothschild's Instagram story, reposting the Instagram story of Rhett Millsaps of a quote from *The New York Times* article, "Hermès Wins MetaBirkins Lawsuit; Jurors Not Convinced NFTs Are Art."

49. Attached hereto as **Exhibit 49** is a true and correct copy of a screenshot of a February 8, 2023 tweet from Christopher Sprigman, <https://twitter.com/CJSprigman/status/1623386572732112913>, captured on February 23, 2023 using PageVault.

50. Attached hereto as **Exhibit 50** is a true and correct copy of a screenshot of February 9, 2023 tweet from Christopher Sprigman, <https://twitter.com/CJSprigman/status/1623748163231268867>, captured on February 23, 2023 using PageVault.

51. Attached hereto as **Exhibit 51** is a true and correct copy of a screenshot of the February 24, 2023 *The Washington Post* article, "Opinion, A misguided jury failed to see the art in Mason Rothschild's MetaBirkins," <https://www.washingtonpost.com/opinions/2023/02/24/mason-rothschild-metabirkinsart-bad-jury-verdict/>, captured February 24, 2023 using PageVault.

52. Attached hereto as **Exhibit 52** is a true and correct copy of a screenshot of Mason Rothschild's Instagram story, reposting the Instagram story of Rhett Millsaps,

<https://www.instagram.com/stories/masonrothschild/3045359521136234390/>, captured February 24, 2023 using PageVault.

53. Attached hereto as **Exhibit 53** is a true and correct copy of a screenshot of Rhett Millsaps's Instagram story, <https://www.instagram.com/stories/rhetoricalquestions/3045356894839351151/>, captured February 24, 2023 using PageVault.

54. Attached hereto as **Exhibit 54** is a true and correct copy of a screenshot of Mason Rothschild's February 24, 2023 tweet, <https://twitter.com/MasonRothschild/status/1629153484825296896>, captured February 24, 2023 using PageVault.

55. Attached hereto as **Exhibit 55** is a true and correct copy of a screenshot of Christopher Sprigman's February 24, 2023 tweet, <https://twitter.com/CJSprigman/status/1629145890865954816>, captured February 24, 2023 using PageVault.

56. Attached hereto as **Exhibit 56** is a true and correct copy of a screenshot of Dr. Blake Gopnik's February 24, 2023 tweet, <https://twitter.com/BlakeGopnik/status/1629109622886858753>, captured February 24, 2023 using PageVault.

57. Attached hereto as **Exhibit 57** is a true and correct copy of a screenshot of the METABIRKINS Website, <https://metabirkins.com/>, captured February 23, 2023 using PageVault.

58. Attached hereto as **Exhibit 58** is a true and correct copy of a screenshot of the METABIRKINS Instagram account, captured February 27, 2023 using PageVault.

59. Attached hereto as **Exhibit 59** is a true and correct copy of Defendant's Admitted Trial Exhibit 526, a screenshot of YellowHeart webpage titled "Floaties | NFT Edition SCOPE Platinum VIP" at <https://yh.io/item-details/floaties-%7C-nft-edition-scope-platinum-vip/aZDjQ1B3F0Xa8e0v>.

60. Attached hereto as **Exhibit 60** is a true and correct copy of a screenshot of the February 22, 2023 *Business of Fashion* article, "The MetaBirkins Creator Isn't Done Fighting Yet," <https://www.businessoffashion.com/articles/technology/the-metabirkins-creator-isntdone-fighting-yet/>," captured February 22, 2023 using PageVault.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 3, 2023
New York, New York

By: /s/ Jessica H. Fernandez
Jessica H. Fernandez